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ABSTRACT

School board members from 50 states have in common the United States Constitution and the legal principles announced by the federal courts in response to that Constitution. New board members are usually concerned with the rights of teachers, parents, and students. Starting with student rights, student conduct that involves freedom of expression may not arbitrarily be restricted unless there is definite and substantial disruption of school activity. Students are entitled to a fair system of hearings in the area of suspension and expulsion. Any library books that are removed must be shown to be either "pervasively vulgar" or "educationally unsuitable." Key principles regarding teachers' rights are that teachers have the right of free speech and there must be a showing of actual and significant disruption of the employment or classroom atmosphere for a teacher to be dismissed or disciplined. Parents of handicapped students are entitled to be informed of their child's educational evaluation, placement, and status. Finally, in regard to the relationship of public and private or parochial schools, the courts have upheld programs that provide secular, neutral or nonideological services, facilities, or materials to parochial schools. (MLF)

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SCHOOL LAW PRIMER FOR NEW BOARD MEMBERS

1983 NSBA Convention
San Francisco, California

Good afternoon, everyone. When I was asked to give a presentation on basic school law for new board members, my first thought was, "What do board members from 50 states have in common as far as the law is concerned?" Well, the obvious answer is the United States Constitution and the legal principles announced by the federal courts in response to that Constitution.

You need only glance at a newspaper or turn on the TV to realize that educational issues are very much alive across the country. The United States Supreme Court continues to grapple with issues such as school prayer, aid to parochial schools, first amendment rights of students and teachers, parental rights, and other matters that will have a real impact on the day-to-day operations of <u>your</u> schools, no matter what state you hail from. Some of the federal decisions will pertain to your district only if you receive federal funds, but most of the law under our federal constitution <u>does</u> apply to your district regardless of funding and you, as board members, are expected to be familiar with and to comply with these principles. This afternoon, I would like to discuss some of these educational issues with you and illustrate how your school districts and you, as board members, are affected by the decisions made in Washington by our Supreme Court and throughout the country by the lower federal courts.

One of the areas that new board members are usually concerned with is individual rights -- rights of teachers, parents and students. It is in this

EA 017 151

area, perhaps, that board members feel most vulnerable to personal liability and it is also in this area that it is sometimes easiest to "make a mistake". So I'd like to discuss some of the basic principles in this area as they affect you as board members.

Let's start with student rights. Most of the law on student rights evolved from the turbulent sixties, when demonstrations, sit-ins and even violence hit many of our public schools. One of the more important cases of that era had to do with the wearing of armbands by students to protest the Vietnam War. When school officials learned that a protest was being planned, they feared violence and adopted a policy that any student wearing an armband would be asked to remove it, and if he refused, he would be suspended until such time as he did remove it. When a group of students appeared at school wearing the armbands, and refused to remove them, they were suspended in accordance with board policy. They challenged the policy as violating their constitutional right to freedom of expression. The students won in the Supreme Court.

Basically, the Court felt that the wearing of armbands in this case was a legitimate expression of free speech and did not, on its own, constitute aggressive, disruptive action. The Court also set forth some standards for both school districts and students to follow where free speech is concerned. These are as follows:

1) Students maintain their rights to freedom of speech and expression in the school setting, and boards may not arbitrarily restrict these rights.

2) Boards may not prohibit a specific expression of speech -- such as wearing armbands -- while permitting other, similar forms of expression.

3) However, if the students' conduct materially disrupts classwork or involves substantial disorder or invasion of the rights of others, the board may take steps to restrict the conduct.

What this means for you, as board members, is that you may not arbitrarily restrict student conduct which involves freedom of expression unless you are faced with a definite and substantial disruption of school activity.

Students also have some rights in the area of suspension and expulsion. Specifically, they are entitled to what is known as "due process" -- that is, a fair system of hearings -- before disciplinary action of this type may be taken against them.

The first thing to remember here is that, even in short term suspensions of less that ten days, a student must be given oral or written notice of the charges against him and, if he denies these charges, an explanation of the evidence that school authorities have and an opportunity to present his side of the story.

The line of demarcation in suspension cases is ten days. For a suspension of less than ten days, an "informal" hearing is legally adequate. At an "informal" hearing, the student generally is not entitled to an attorney or to question witnesses or bring witnesses with him. The "informal" hearing requires only that the student be told why he is being disciplined and that he

be allowed to tell his side of the story. This type of hearing is usually held in the school administrator's office; parents may or may not be invited to attend.

With a suspension of ten or more days, however, a more formal procedure is required. At a "formal" hearing, the student is permitted to have an attorney if he so desires, and is permitted to question his accusers and present witnesses on his behalf. You can assure compliance with these requirements by consulting with your board attorney in all long-term suspension and expulsion cases, and I strongly recommend that this be done.

One more area of students' rights that remains controversial concerns the removal or regulation of books in the school library. We have a very recent case which sets out some guidelines on this subject. In that case, the school board removed from the school library some books that it considered unsuitable for the students. Here are the standards to use:

1) You may not remove books with the intention of denying students access to ideas with which you disagree.

2) You must be able to show that any books you remove are either "pervasively vulgar" or "educationally unsuitable".

While neither of these standards is very clear, the point to remember is that you do <u>not</u> have unbridled discretion to remove or prohibit library books. However, there is certainly no legal requirement that you stock your school library with books that you genuinely feel are objectionable. On this

score, it's a good idea to keep in touch with your community and solicit their input. That way, if you do find it necessary to remove or prohibit books, you will have the community behind you.

Turning now to teachers' rights, again, this is an area in which board members seem to feel very vulnerable. Most of you will be guided in this area by your collective bargaining agreements and your own state's laws. However, there are some key federal principles which you should be familiar with.

First, teachers too have the right of free speech, and this comes into play most often when teachers exercise their rights as citizens. For example, a teacher who writes a letter to a newspaper criticizing board actions cannot be dismissed on that basis alone. Instead, consideration must first be given to whether any adverse statements are directed to immediate supervisors or anyone else with whom the teacher would be in daily contact. An employee who makes a public attack on a superior may be making discipline or harmony among co-workers impossible. In such cases, that employee's free speech rights must be balanced with the board's need to maintain good employee-employer relations.

Dismissal or discipline of a teacher cannot be based merely on a board's displeasure with that teacher's legally-protected conduct. Instead, there must be a showing of actual and significant disruption of the employment or the classroom atmosphere. For example, a teacher who incites students to misbehave in order to protest a board action would certainly be subject to discipline.

It is also important to remember that teachers and other employees are

entitled to "due process" when faced with disciplinary action. Although your state's law will define what is required in this area, at the very least, teachers and employees will be entitled to notice and a hearing before disciplinary action is taken.

The area of parents' rights is somewhat new and still developing. Most often, the conflict is between the parent and state law, but in recent years several federal enactments have put the burden on school board members to protect parental rights. One of these enactments has to do with student records.

The Family Educational Rights & Privacy Act requires that parents be allowed access to their child's school records. Also, parental authorization is needed before copies of these records may be sent to non-school organizations and agencies, with certain exceptions. And, parents who believe their child's records contain inaccurate or irrelevant information are permitted to challenge the contents of those records.

Parents of handicapped students are entitled, under federal law, to be informed of their child's educational evaluation, placement and status, in their native language, and are accorded the right to a hearing on any matter relating to the child's handicapped status. This includes the right to counsel and the presentation and cross-examination of witnesses.

Most school districts have policies which detail the rights and responsibilities of parents, students and staff. You should be familiar with your district's policies in these important areas. If there is ever any doubt

as to the propriety of a board's action, consult with your solicitor before taking the action.

Let's now turn to the relationship of public and private or parochial schools. The first amendment to the U.S. Constitution prohibits the passage of "any law respecting an establishment of religion." That means that neither a state nor the federal government can enact laws which aid one religion, aid all religions, or prefer one religion over another. No tax in any amount can be levied to support any religious activities or institutions, whatever they may be called or whatever form they may adopt to teach or practice religion. This prohibition against the establishment of religion by law was intended to erect a "wall of separation between church and state".

With this principle in mind, let's look at how the Supreme Court has interpreted it.

One of the first cases involving aid to parochial schools came in 1947. A taxpayer challenged a New Jersey law that required public boards of education to provide transportation to children attending parochial schools.

The Court upheld the state law, saying that the provision of transportation services to parochial school pupils was permissible as an extension of general welfare services, intended to help parents get their children safely to school, regardless of their religion. And, since the state contributed no money to the parochial schools themselves, there was no violation of the separation of church and state.

Another volatile topic in this area concerns textbook aid to parochial schools. A New York law required each local school board to purchase textbooks and lend them, without charge, to all children in the district who attended public or parochial schools. Although the textbooks loaned to parochial schools did not have to be the same as those used in the public schools, the law did prohibit the purchasing or lending of any books with religious contents.

The law was upheld on the same basis as the transportation law -- that textbook lending was not an aid to religion but rather an assistance in the accomplishment of the legitimate state objective of secular education for all children.

Following these decisions, many states have adopted varying forms of what has come to be known as "parochiaid". Generally speaking, the courts have upheld programs which provide secular, neutral or non-ideological services, facilities or materials to parochial schools. For example, bus transportation, school lunches, public health services and secular textbooks are usually held to be legally acceptable. However, state-supported programs that provide supplements for the salaries of teachers of secular subjects in parochial schools, or other programs of this type that involve payment of personnel, rather than provision of goods or services, have been held unconstitutional and invalid. The reasoning given is that a teacher's presentation of course material is not subject to the same degree of certainty as a textbook's contents. Also, the courts believe that a teacher of secular

subjects in a religious school environment is bound to be influenced by that environment and will be unable to maintain the line of separation between church and state.

The whole subject of religion in education is especially meaningful today because of the issue of tuition tax credits. The standards applied in determining the legality of tuition tax credits are essentially the same as those used for the textbook, transportation and teacher supplemental aid cases.

Any system of permitting parents of parochial school students to take a tax credit for their child's tuition would have to pass these legal tests: First, the tax credit must not amount to an "establishment of religion". Secondly, any tuition tax credit law would have to have a secular legislative purpose, that is, the primary effect of a tax credit law must not be to advance or inhibit religion. And, thirdly, any tax credit law must avoid what is called "excessive entanglement" with religion. An example of the latter legal test would be the state-supported teacher working in a parochial school that I mentioned earlier. In order to make sure that the teacher is not being influenced by the religious environment of the school, the state would have to institute some kind of monitoring system. In essence, the state would have to get too involved with the day-to-day operation of the parochial school, and this would constitute an "excessive entanglement" with religion.

Tuition aid for parents of parochial school students commonly takes two forms, and the courts have already addressed both of these methods.

One form of tuition relief is partial reimbursement to parents in low-income brackets. This idea was struck down, however, because the effect was to subsidize educational costs in parochial schools. Even though the money went to the parents, rather than the schools themselves, the bottom line was that the parents received money from the government for sending their children to parochial school. The court felt that, in effect, the reimbursement was an incentive to parents to send their children to sectarian schools.

The other type of tuition aid is provided in the form of income tax benefits. In one state, parents of parochial school students were permitted to deduct a specified amount from their adjusted gross income. Again, the court disallowed this, finding that the deduction was really no different than a direct cash reimbursement in serving as an incentive for sending children to parochial schools.

Although it has been 10 years since the Supreme Court has addressed the issue of tuition tax credits, the idea, as we all know, is still very popular and it is likely that if federal or state legislation is passed in this area, the court will certainly have another look at it.

I'd like to conclude by saying that being a board member, no matter which state you're from, is no easy task, certainly not from a legal perspective. What I have discussed with you this afternoon is but a fraction of the body of federal school law each of you is expected to be familiar with. And yet, despite the overwhelming amount of learning that new board members must undertake, we have a sound, effective system of free public education in this country. That goal alone makes it all worthwhile. Thank you.